

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

No. 96-4680

HARLEY LEE TAYLOR,
Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Florence.
C. Weston Houck, Chief District Judge.
(CR-96-232)

Submitted: March 11, 1997

Decided: April 24, 1997

Before WILKINS, LUTTIG, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

William F. Nettles, IV, Assistant Federal Public Defender,
Florence,
South Carolina, for Appellant. Alfred William Walker Bethea, Assis-
tant United States Attorney, Florence, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Pursuant to a guilty plea, Harley Lee Taylor was convicted of one count of receiving child pornography through the United States mail in violation of 18 U.S.C. § 2252(a)(2) (1994). Taylor's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), challenging whether the district court erred in denying Taylor's motion for a downward departure from the Sentencing Guidelines* based on aberrant behavior. Finding no error, we affirm.

Pursuant to a sting operation, United States postal inspectors made a controlled delivery of a video containing child pornography to Taylor's rural mailbox. Following the delivery, postal inspectors executed a search warrant for Taylor's home and discovered the partially viewed video in his VCR. Prior to sentencing, Taylor filed a motion for downward departure based on aberrant behavior. The district court denied the motion, stating that while the court had the authority to grant such a departure, the facts of this case did not warrant one.

Where the district court recognizes that it has the authority to grant a motion for downward departure, its refusal to do so is not reviewable. United States v. Bayerle, 898 F.2d 28, 29-31 (4th Cir. 1990). We have examined the entire record in this case in accordance with the requirements of Anders, and find no meritorious issues for appeal. The court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client.

We affirm the district court's judgment order. We dispense with oral argument because the facts and legal contentions are adequately

*United States Sentencing Commission, Guidelines Manual (Nov. 1995).

presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED